

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-530

November 5, 1998

OLD TOWN WATER DISTRICT
Request for Approval of
Agreement/Contract for Water
Service With the Penobscot
Indian Nation

Order Approving Agreement

WELCH, Chairman; NUGENT and DIAMOND, Commissioner

I. SUMMARY OF DECISION

On July 8, 1998, the Old Town Water District (District) filed a request for approval of an Agreement for Water Service to Indian Island (Agreement)¹ between it and the Penobscot Indian Nation (PIN or Nation), pursuant to 35-A M.R.S.A. §703(3). In this Order, we find that the Agreement reasonably meets the needs of the District and the Nation and is consistent with the interests of the District's other ratepayers. Accordingly, we approve the Agreement.

II. DISCUSSION AND DECISION

Through the Agreement, the Nation grants to the District an easement to locate and maintain new transmission mains to replace the existing transmission mains from Old Town to Milford across the Penobscot River (including sections of the transmission main(s) across Indian and Smith Islands).² The easement survives the termination of the Agreement. The Agreement also adjusts the rates charged to the PIN to reflect the cost of service.

The rates are adjusted in two stages. The first stage rates become applicable upon the District's installation of a meter, backflow preventer, necessary enclosure(s) and water quality sampling port. These rates result in an annual reduction of

¹The Agreement is appended hereto as Attachment A.

²The easement also provides the right to install and maintain other equipment such as a new master meter and meter enclosure and sampling port.

charges for water service of approximately \$3,000. In addition, fire protection (hydrant) charges are eliminated because the District will only be obligated to provide water up to the master meter.³ It will not be obligated to provide any general maintenance to the PIN distribution system, metering of the PIN distribution system or hydrant maintenance.

The second stage rates will become effective when the Nation adds to its distribution system a storage standpipe or reservoir (together with any rechlorination facilities required for the PIN distribution system by the Safe Drinking Water Act), provided that the new storage facility is satisfactory to the District. The second stage rates amount to an additional reduction of approximately \$1,800 in the District's charges for water service to the Nation.

The District has based the charges upon 1996 and some 1997 cost data. These were the data most recently available when the agreement was being negotiated. The agreement provides:

The Schedule of Charges is based upon an analysis of the District's cost of water service, which cost the parties acknowledge will change from time to time. In the event that either (a) the District adjusts its General Schedule of Rates or (b) a change in the District's cost of water service results in the need to amend the Schedule of Charges, the District will review the Schedule of Charges to PIN, present any proposed amendments to PIN, and seek the prior approval of the MPUC before instituting any change to the Schedule of Charges.

Agreement ¶4(A). We read this paragraph as requiring the District to determine when a change in the cost of water service results in the need to amend its charges, propose the amendment of such charges and seek our approval for the proposed amendments.

We approve the Agreement because it provides a reasonable resolution to the extraordinary circumstances facing the District and the Nation. The easement that the Nation will grant to the District pursuant to the Agreement will allow the District to

³The District has represented that these charges, which amount to approximately \$40,000 a year, have not been collected by the District for some time. It further represents that it had stopped providing maintenance of the hydrants. In addition, it does not claim ownership of the hydrants. Under the Agreement, it grants a release of any right to ownership of the hydrants.

replace transmission mains from Old Town to Milford crossing the Penobscot River, Indian Island and Smith Island. The District represents that this crossing costs approximately \$106,250 less than alternative crossings and provides operational advantages which could not be provided by the alternative crossings.

Because the Agreement allows the District to pursue the most cost effective option while maintaining rates that reflect the cost of serving the Nation, we find that approval of the Agreement is consistent with the interests of the District, the Nation and the District's other ratepayers.

Our approval here should not be viewed as precedent concerning our treatment of special rate contracts. See, e.g., *Searsport Water District, Proposed Increase in Rates*, Docket No. 97-793, Order at 11 (July 23, 1998). Rather, we base our decision on the unique circumstances facing the District and the Nation and our finding that the Agreement is consistent with the interests of the District, the Nation and the District's other ratepayers.

Accordingly, we

O R D E R

That the Agreement for Water Service to Indian Island is approved consistent with this Order.

Dated at Augusta, Maine this 5th day of November, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.